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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

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10 PACIFIC NORTHWEST REGIONAL)
11 COUNCIL OF CARPENTERS,)

12 Plaintiff,)

13 v.)

14 LABORERS INTERNATIONAL UNION)
15 OF NORTH AMERICA, *et al.*,)

16 Defendants.)

CASE NO. C09-420 RSM

ORDER GRANTING DEFENDANTS'
MOTION TO TRANSFER

17 **I. INTRODUCTION**

18 This matter comes before the Court on Defendants' Motion to Transfer. (Dkt. #4).
19 Defendants argue that this case should be transferred to the United States District Court for
20 the District of Columbia pursuant to 28 U.S.C. § 1404(a). Defendants indicate that this case
21 arises out of an arbitration award that was issued in the District of Columbia, and that all
22 parties to an agreement that controls in this case reside in that district.

23 Plaintiff responds that it is neither bound to this agreement nor subject to the arbitration
24 award Defendants rely upon to justify transfer. Therefore, they argue that the Court should
25 uphold their choice of forum. Plaintiff also contends that the Court should stay the
26 proceedings in light of a pending administrative hearing.

27 For the reasons set forth below, the Court agrees with Defendants, and GRANTS
28 Defendants' motion to transfer.

II. DISCUSSION

A. Background

The instant lawsuit arises over a jurisdictional dispute between two labor unions over scaffolding work performed for Brand Energy Services, LLC (“Brand”), near Moses Lake, Washington.¹ Defendant Laborers’ International Union of North America (“LIUNA”) challenged Brand’s assignment of work to members of the United Brotherhood of Carpenters and Joiners of America (“Carpenters”). Specifically, LIUNA claimed that Carpenters’ regional affiliate, Pacific Northwest Regional Council of Carpenters (“PNRCC”) – the Plaintiff in this action – was improperly performing work within the jurisdiction of LIUNA. Notably, both LIUNA and Carpenters are national labor unions headquartered in Washington, D.C., while PNRCC has its offices and principal place of business in Kent, Washington.

LIUNA, Carpenters, and Brand are all bound by a collective bargaining agreement entitled the National Construction Agreement (“NCA”) and its corresponding Plan for Settlement of Jurisdictional Disputes in the Construction Industry (“the Plan”). The NCA provides that National and International Unions are parties to the NCA, including “those local unions affiliated with such National and International Unions who accept the terms of this Agreement by virtue of accepting the benefits of the Agreements and/or referring employees to work on such jobs.” (Dkt. #5, Decl. of Davis, Ex. A, Preamble ¶ 1).

The Plan further provides that “[a] Union may become stipulated to the Plan by virtue of its affiliation with the Department or its National or International Union’s affiliation with the Department, a signed [] stipulation form setting forth that it is willing to be bound by the terms of the Plan or a provision in a collective bargaining agreement.” (Decl. of Davis, Ex. D. Art. II, § 1(a)).²

The Plan also outlines the procedures for resolving work jurisdictional disputes, including the proper procedure for binding arbitration. The Plan requires in relevant part that:

¹ Brand is a nominal Defendant in this action.

² The Plan defines “Department” as the Building and Construction Trades Department, AFL-CIO, a national alliance of unions in the construction industry.

1 (1) arbitration hearings are to be held in Washington, D.C.; (2) an action to enforce an
2 arbitration award must be brought in the United States District Court for the District of
3 Columbia; and (3) all parties to the Plan are deemed to have consented to the District of
4 Columbia's jurisdiction.

5 In accordance with the Plan, LIUNA filed a dispute with the Plan Administrator over
6 the jurisdiction of the scaffold tendering work awarded to Carpenters on March 9, 2009.
7 LIUNA believed that it was entitled to perform the work for the Moses Lake project. After
8 the parties were unable to resolve their dispute informally, the matter was submitted to
9 binding arbitration pursuant to the Plan, and a hearing was held on March 20, 2009 in
10 Washington, D.C. LIUNA and Carpenters were represented by their International Unions.

11 Although PNRCC was not present at the arbitration hearing, a threshold issue raised
12 by Brand during the hearing was whether PNRCC was bound to the NCA and the Plan. The
13 Plan Arbitrator, J.J. Pierson, found in the affirmative. He held that "[b]ased on clear and
14 convincing evidence, this arbitrator finds that both Brand and [Carpenters], including its
15 affiliate [PNRCC], are stipulated to the Plan, and subject to the Procedures set forth in its
16 Rules and Regulations." (Decl. of Davis, Ex. G at 7).

17 With respect to the substantive issues involved in the arbitration hearing, Arbitrator
18 Pierson held in favor of LIUNA. He found that Brand had improperly assigned work for the
19 Moses Lake project to Carpenters, and that Brand should have assigned the work to LIUNA.
20 (*Id.* at 18).

21 Dissatisfied, PNRCC filed the present action on March 30, 2009, seeking declaratory
22 relief and asking this Court to vacate the March 23, 2009 Arbitration Award pursuant to § 301
23 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185. PNRCC alleges in its
24 complaint that the Arbitration Award is unenforceable because it was not a party to the NCA
25 or the Plan. PNRCC alleges that only the National Labor Relations Board ("NLRB") has
26 authority to resolve this jurisdictional dispute.

27 Four days after PNRCC filed its complaint, LIUNA filed a petition under § 301 of the
28 LMRA, and the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-11, seeking enforcement of

1 the Arbitration Award in the United States District Court for the District of Columbia.
2 LIUNA filed the instant motion in this Court seven days thereafter, arguing that the
3 procedures set forth in the Plan state that “[a]ll parties signatory or stipulated to this
4 agreement consent to the jurisdiction of the United States District Court for the District of
5 Columbia.” (Decl. of Davis, Ex. D, Art. VII, § 2(a)).

6 Importantly, and prior to filing of this lawsuit by PNRCC, Brand requested a hearing
7 with the NLRB to resolve the jurisdictional dispute in March of 2009 pursuant to § 10(k) of
8 the NLRA, 29 U.S.C. § 160(k). This statute provides that the NLRB “is empowered and
9 directed to hear and determine the dispute out of which such unfair labor practice shall have
10 arisen[.]” *Id.* The NLRB originally scheduled its hearing on April 7, 2009 to resolve the
11 jurisdictional dispute between the parties, but ordered the parties to show cause why the §
12 10(k) hearing should not be quashed in light of the Arbitration Award. (Dkt. #12, Decl. of
13 Shanley, Ex. F). PNRCC responded as directed, and the NLRB rescheduled the hearing to
14 May 4, 2009. The hearing occurred as scheduled, but no decision has been rendered.

15 **B. Motions to Transfer**

16 28 U.S.C. § 1404(a) states that “[f]or the convenience of parties and witnesses, in the
17 interest of justice, a district court may transfer any civil action to any other district or division
18 where it might have been brought.” The purpose of this section is to “prevent the waste of
19 time, energy, and money and to protect litigants, witnesses and the public against unnecessary
20 inconvenience and expense.” *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) (internal
21 quotations and citation omitted). The statute “displaces the common law doctrine of forum
22 non conveniens” with respect to transfers between federal courts. *See Decker Coal Co. v.*
23 *Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986).

24 Section 1404(a) is not, however, simply a codification of the common law doctrine. In
25 passing § 1404(a), Congress “intended to permit courts to grant transfers upon a lesser
26 showing of inconvenience” than was needed for dismissal under the doctrine of forum non
27 conveniens. *Norwood v. Kirkpatrick*, 349 U.S. 29, 32 (1955). The decision to transfer an
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1 action is left to the sound discretion of the trial court, and must be determined on an
2 individualized basis. *See Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988).

3 The statute has two requirements on its face. First, the district to which defendants seek
4 to have the action transferred must be one in which the action “might have been brought.” 28
5 U.S.C. § 1404(a). Second, the transfer must be for the “convenience of parties and
6 witnesses,” and “in the interest of justice.” *Id.*

7 Here, the Court finds that the action clearly could have been brought in District of
8 Columbia. LIUNA is a labor organization headquartered in Washington, D.C. The District of
9 Columbia also has subject matter jurisdiction over the claims in this case, which require
10 application of federal laws. Therefore the primary issue for the Court to resolve is whether
11 the second requirement of § 1404(a) has been met.

12 1. Section 1404(a) Factors

13 In determining whether a transfer is appropriate under this requirement, the Court must
14 weigh numerous factors, including: (1) the location of where the relevant agreements or
15 alleged events in the lawsuit took place; (2) the state that is most familiar with the governing
16 law; (3) the plaintiff’s choice of forum; (4) the respective parties’ contacts with the forum,
17 and the relation of those contacts to the plaintiff’s cause of action; (5) the difference in cost of
18 litigation in the two forums; (6) the availability of compulsory process to compel attendance
19 of non-party witnesses; and (7) the ease of access to sources of proof. *Jones v. GNC*
20 *Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000).

21 Other relevant considerations, drawn from the traditional forum non conveniens
22 analysis, are: (8) the pendency of related litigation in the transferee forum; (9) the relative
23 congestion of the two courts; and (10) the public interest in the local adjudication of local
24 controversies. *See Decker Coal*, 805 F.2d at 843. The burden is on the defendant to
25 demonstrate that the transfer is warranted. *Saleh, et al., v. Titan Corporation, et al.*, 361
26 F.Supp.2d 1152, 1155 (C.D. Cal. 2005). This Court has recognized that the above-mentioned
27 factors cannot be mechanically applied. *Amazon.com v. Cendant Corp.*, 404 F.Supp.2d 1256,
28 1259 (W.D. Wash. 2005).

1 2. The District of Columbia is the Proper Forum

2 In the instant case, the Court finds that this matter should be transferred to the District
3 of Columbia. At the outset, the Court notes that the traditional statutory factors set forth in 28
4 U.S.C. § 1404(a) such as the convenience to the parties and the convenience to the witnesses
5 apply with minimal force in this case. The only relief PNRCC seeks in this lawsuit is an order
6 from the Court that PNRCC is not subject to the NCA or the Plan, thereby making the
7 Arbitration Award unenforceable. Moreover, judicial review of the NCA and its Plan, as well
8 as the Arbitration Award itself is purely a legal issue and does not contemplate evidentiary
9 discovery. Any court reviewing this case must look primarily to the administrative record
10 created at the arbitration hearing. Consequently, the majority of the factors mentioned above
11 in the *Jones* case have little probative value to the Court.

12 To the extent that any evidentiary discovery must be conducted in this case, the location
13 of such evidence is located in the District of Columbia. LIUNA and Carpenters, PNRCC's
14 parent union, are headquartered in Washington, D.C. In addition, the Plan Administrator to
15 the NCA is located in that district. The arbitration hearing also occurred in that district, and
16 LIUNA and Carpenters through their International Unions were present at the hearing. As a
17 result, those with knowledge regarding the interpretation of the Plan as well as the Arbitration
18 Award are located in Washington, D.C. *See, e.g., Mobile Video Servs., Ltd. v. Nat'l Ass'n of*
19 *Broadcast Employees and Technicians, AFL-CIO*, 574 F.Supp. 668, 670 (S.D.N.Y. 1983)
20 (finding that because "[a]ll the material occurrences which formed the factual basis for the
21 arbitration award took place in Washington, D.C.," the proper venue was the District of
22 Columbia).

23 Relatedly, PNRCC's argument that the Court should honor its choice of forum is not
24 compelling. The only connection this district has to this lawsuit is that PNRCC is located in
25 this district. On the other hand, and as described above, the operative facts that give rise to
26 enforcement of this Arbitration Award are located in Washington, D.C. *See id.* at 671
27 ("While in general plaintiff's choice of forum is entitled to considerable weight, that choice is
28 accorded less weight when . . . the operative facts of the case have no material connection

1 with [plaintiff's choice].”) (internal quotations and citations omitted); *see also Lou v.*
2 *Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987) (“If the operative facts have not occurred within
3 the forum . . . [the plaintiff's choice] is entitled to only minimal consideration.”).

4 Furthermore, the interests of justice support transfer to the District of Columbia. As
5 mentioned above, there is currently a pending action in the District of Columbia wherein
6 LIUNA is seeking enforcement of the Arbitration Award pursuant to NCA and the Plan. It
7 would be inefficient and duplicative for this Court to engage in effectively the same analysis
8 based on PNRCC's requested relief. Indeed, PNRCC recognizes that its lawsuit is
9 fundamentally related to LIUNA's pending litigation as reflected by its statement that
10 consolidation of this lawsuit with LIUNA's lawsuit in the District of Columbia in this Court is
11 the proper course of action. (*See* Dkt. #11 at 7-8). Notwithstanding PNRCC's failure to cite
12 any authority to justify such a request, this acknowledgment clearly reflects an understanding
13 that a ruling from this Court would potentially be at odds with a ruling from the District of
14 Columbia. Allowing PNRCC to proceed under such circumstances certainly does not serve
15 the interests of justice or judicial economy.

16 The Court also gives no weight to PNRCC's argument that ruling on LIUNA's motion
17 to transfer amounts to ruling on the substantive issues raised by its lawsuit. PNRCC's lawsuit
18 arises out of an agreement entered into between Carpenters, LIUNA, and Brand. This
19 agreement was entered into in Washington, D.C., and as mentioned above, the arbitration
20 hearing interpreting these agreements also occurred there. Thus, irrespective of PNRCC's
21 attempts to claim it is not within the purview of the NCA, the starting point for any analysis
22 requires examination of the original agreement between Carpenters, LIUNA, and Brand, as
23 well as the Arbitration Award itself that PNRCC is challenging.

24 The circular nature of PNRCC's arguments is best evidenced by its contention that it is
25 not a local union as contemplated by the Plan, but rather an intermediate union that falls
26 outside the Plan. (Dkt. #11 at 3-4). Resolution of this argument undoubtedly requires a
27 substantive analysis of the merits of this case; analysis PNRCC contends that this Court
28 should not make in justifying transfer. Therefore just as LIUNA is arguing that PNRCC is

1 clearly subject to jurisdiction in the District of Columbia based on the language of the Plan,
2 PNRCC likewise argues that it is not bound to that district based on the language of the Plan.
3 In either circumstance, the analysis requires an examination of the Plan itself.

4 Ultimately, LIUNA brought its lawsuit to enforce the underlying Arbitration Award
5 based on the clear mandate of the Plan. Whether the Plan appropriately binds PNRCC is
6 irrelevant for purposes of the § 1404(a) analysis. LIUNA has met its burden in justifying
7 transfer, and the most appropriate forum to settle this dispute is the District of Columbia.

8 **C. Section 10(k) of the NLRA**

9 The Court also finds it worthwhile to address PNRCC's contention that based on the
10 pending § 10(k) hearing with the NLRB, the NLRB has proper jurisdiction to resolve this
11 dispute. In support of this argument, PNRCC repeatedly states throughout its opposition that
12 the NLRB "found that it was statutorily required under § 10(k) to serve as the final arbiter in
13 the jurisdictional dispute between [LIUNA] and the PNRCC." (Dkt. #11 at 5); (*see also id.* at
14 7) ("In rejecting [LIUNA's] argument, the NLRB determined that the PNRCC is not bound by
15 the Plan award via the NCA and the NLRB is the proper forum to decide the jurisdictional
16 dispute.").

17 However, PNRCC overstates the findings of the NLRB. The NLRB merely required
18 PNRCC to show cause why its hearing should not be dismissed in light of the Arbitration
19 Award. PNRCC responded as directed and PNRCC only rescheduled the original April 7,
20 2009 hearing date to May, 4, 2009. In its order rescheduling the hearing date, the NLRB was
21 completely silent as to the merits of the case. (*See* Decl. of Shanley, Ex. I). No statement or
22 finding was made rejecting any of LIUNA's specific arguments. Likewise, no statement or
23 finding was made accepting PNRCC's arguments.

24 In any event, PNRCC fails to explain how the § 10(k) hearing effects LIUNA's motion
25 to transfer, other than mentioning in passing within a footnote that "the proper course of
26 action is to stay this proceeding pending completion of the § 10(k) hearing before the
27 [NLRB]." (Dkt. #11 at 8, n.1). Whether the NLRB has sole jurisdiction over this claim does
28 not affect LIUNA's motion to transfer. The narrow issue for the Court to determine at this

1 stage of the proceedings is whether the District of Columbia is the more appropriate forum.
2 PNRCC is certainly free to raise any arguments related to the NLRB's jurisdiction over its
3 claims or otherwise file a motion to stay in the District of Columbia.

4 **III. CONCLUSION**

5 Having reviewed the relevant pleadings, the declarations and exhibits attached thereto,
6 and the remainder of the record, the Court hereby finds and ORDERS:

7 (1) Defendants' Motion to Transfer (Dkt. #4) is GRANTED. This case is hereby
8 TRANSFERRED to the United States District Court for the District of Columbia. The Clerk
9 shall close this file and notify the Clerk of the Court in that district.

10 (2) The Clerk is directed to forward a copy of this Order to all counsel of record.

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12 DATED this 5th day of June, 2009.

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15 RICARDO S. MARTINEZ
16 UNITED STATES DISTRICT JUDGE
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